

Message Text

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ACTION L-03

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FOR L - MARK FELDMAN FROM L/EUR - DAVID GANTZ

E.O. 11652: N/A
TAGS: EFIS, EC, ICNAF, XN, US, PLOS
SUBJECT: US/EC FISHERIES NEGOTIATIONS MANDATE ISSUES

REF: STATE 270992

1. GANTZ AND OTHER MEMBERS OF US GIFA DELEGATION MET IN TWO HOUR SESSION DECEMBER 13 WITH EC COMMISSION LAWYER HARDY TO REVIEW MANDATE ISSUES. HARDY GAVE US TEXT OF "INFORMATION NOTE", EXPLAINING QUESTIONS OF EC AUTHORITY AND TOUCHING ON MEANS BEING CONSIDERED TO IMPLEMENT OBLIGATIONS UNDER GIFA (SEPTTEL). EC "INFORMATION NOTE" ON MANDATE ESSENTIALLY REPEATS ARGUMENTS MADE ORALLY EARLIER REGARDING PROCESS BY WHICH NOT ONLY EC BUT MEMBER STATES ARE BOUND BY CONCLUSION OF AGREEMENT WITH EC UNDER ROME TREATY ARTICLE 228. NOTE ALSO PURPORTS TO RESPOND TO QUESTIONS RAISED PARA 6 REFTTEL. ESSENCE OF EC ARGUMENT IS THAT PROCESS WILL AUTOMATICALLY BIND MEMBER STATES TO OBLIGATIONS UNDER THE AGREEMENT ONCE PROCESS IS COMPLETED. OBLIGATIONS (WHERE REQUIRED BY SUBJECT MATTER) ARE ALSO BINDING DIRECTLY ON NATIONALS OF MEMBER STATES. SEVERAL APPROACHES TO ASSURING COMPLIANCE, INCLUDING EC SANCTIONS FOR VIOLATIONS, ARE BEING CONSIDERED.

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2. DISCUSSION WHICH FOLLOWED INDICATED THAT COMMISSION HAD DEVELOPED SOMEWHAT FURTHER ITS THOUGHTS ON HOW ENFORCEMENT AND COMPLIANCE WOULD BE HANDLED INTERNALLY, BUT HAD REACHED NO FIRM CONCLUSIONS. EC HAS NOT DECIDED, FOR EXAMPLE, WHETHER THERE WILL BE A SEPARATE INTERNAL INSTRUMENT FOR EVERY FISHERIES AGREEMENT CONCLUDED BY THE EC (AS SEEMS LIKELY ACCORDING TO HARDY) OR WHETHER A COMMON REGULATORY AND IMPLEMENTING FRAMEWORK WILL BE ATTEMPTED. HARDY CONSIDERS SOME PROVISIONS OF THE GIFA (SUCH AS ARTICLE V - FISHING IN ACCORDANCE WITH US REGULATIONS AND ARTICLE VII - MARINE MAMMALS) LARGELY SELF-EXECUTING, WHILE THE PERMIT APPLICATION PROCESS (ARTICLE VI) WILL REQUIRE REGULATIONS ON THE PART OF THE EC. HE COULD NOT SAY TODAY, HOWEVER, WHETHER PERMIT APPLICATIONS WOULD GO DIRECTLY FROM VESSEL OWNERS TO EC, OR THROUGH MEMBER STATE FISHERIES AGENCIES, THENCE TO EC AND TO US.

3. WHEN ASKED WHETHER EC COULD ACCEPT THE PENALTIES PROVIDED FOR IN ARTICLE X, THE ANSWER WAS AN UNEQUIVOCAL "YES". HOWEVER, HARDY POINTED OUT THAT THE QUESTION OF WHETHER CRIMINAL PENALTIES WILL APPLY (AND BY WHOM) FOR VIOLATIONS IN EC WATERS RAISES MORE DIFFICULT PROBLEM. HE ALSO ARGUED THAT MANDATE CLEARLY EXTENDED TO RESEARCH FOR MANAGEMENT AND CONSERVATION OF STOCKS (ARTICLE XI), AN AREA WE HAD THOUGHT WAS LESS CLEARLY THAN SOME WITHIN THE EC'S MANDATE.

4. IN COURSE OF DISCUSSION OF POSSIBLE SIGNATURE BY MEMBER STATES AND EC, HARDY CONTENTED THAT MEMBER STATE SIGNATURE, NECESSARY ONLY WHEN ONE OR MORE ARTICLES OF AN AGREEMENT TREAT OBLIGATIONS BEYOND EC COMPETENCE, A SITUATION WHICH IS NOT THE CASE HERE. (HE CONTINUES TO ASSUME THAT EC MEMBER STATE WILL NOT BE SIGNATORIES.) WE ALSO DISCUSSED PRACTICAL PROBLEMS, SUCH AS WHO IS TO BE CONTACTED IN THE CASE OF AN EMERGENCY, E.G., VIOLATION LIMITED OFFICIAL USE

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FOLLOWED BY HOT PURSUIT. HARDY SAID THAT NORMAL PROCEDURE WOULD BE TO GET IN TOUCH WITH EC REP (PROBABLY IN WASHINGTON), ALTHOUGH HE CONCEDED THAT IN EXCEPTIONAL CASES US WOULD PROBABLY WISH TO CONTACT REPRESENTATIVE OF AFFECTED MEMBER GOVERNMENT DIRECTLY AS WELL. ON QUESTION OF AGENTS (STATUS OF WHOM WAS CLARIFIED BY US GROUP) HARDY NOTED THAT PERMIT APPLICATION PROCESS COULD

BE USED TO ASSUME COMPLIANCE ON THIS AS WELL AS
OTHER TECHNICAL MATTERS.

5. WE AGAIN STRESSED NEED FOR PROMPT COMMISSION
ACTION TO ESTABLISH DEFINITE INTERNAL MECHANISMS
TO ASSURE COMPLIANCE, AND TO BE
ABLE TO EXPLAIN TO CONGRESS IN CONSIDERABLE DETAIL
HOW EC WOULD IN FACT ASSURE THAT ITS OBLIGATIONS
WOULD BE MET. HARDY INDICATED CONSIDERABLE
UNDERSTANDING OF PROBLEM, BUT IT WAS OBVIOUS THAT
MANY DECISIONS ON INTERNAL IMPLEMENTATION OF FISHERIES
POLICY REMAIN TO BE MADE. HE PROMISED TO GIVE US
AN UPDATE OF SPECIFIC STEPS TAKEN OR CONTEM-
PLATED WITHIN THREE OR FOUR WEEKS.

6. COMMENT. ON THE MANDATE, WE BELIEVE WE HAVE
ABOUT AS MUCH INFORMATION AS WE ARE LIKELY TO OBTAIN
IN THE IMMEDIATE FUTURE. "NOTE" IS USEFUL IN PINNING
DOWN COMMISSION ON BROAD QUESTIONS OF AUTHORITY,
ALTHOUGH IT OMITTS DETAIL ON MEANS OF IMPLEMENTATION.
IF THE EC PROCEEDS AS PLANNED WITH SIGNATURE AND
CONCLUSION OF THE AGREEMENT AFTER COUNCIL APPROVAL,
MEMBER STATES WILL BE BOUND UNDER ARTICLE 228. THE
QUESTION, OF COURSE, IS WHETHER THE INTERNAL
ARRANGEMENTS WILL ASSURE THE PROMPT, EFFECTIVE
COMPLIANCE WE REQUIRE AND IN ANY EVENT,
WHETHER THEY WILL BE COMPLETED BY MARCH 1. WE
FEEL REASONABLY CONFIDENT THAT EC UNDERSTANDS
WHAT HAS TO BE DONE, AND WE REALIZE THAT IT HAS MOVED
FORWARD IN ITS THINKING AS TO HOW TO GO ABOUT
DOING IT, BUT MANY OF THE DETAILS REMAIN TO BE
WORKED OUT. THE PROCESS IS COMPLICATED BY THE
EC'S NEED TO DEAL CONSISTENTLY NOT ONLY WITH THE
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UNITED STATES AND OTHER COUNTRIES WHERE EC VESSELS
FISH, BUT WITH ITS OWN REGULATORY SCHEME FOR VESSELS
FISHING IN EC WATERS. HINTON

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